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FILED  
Superior Court  
NOV 25 2008  
J. SANDOVAL, Deputy

TRANSACTION 22484449

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

Coordination Proceeding  
Special Title (Rule 1550(b)):

JUDICIAL COUNCIL COORDINATION  
PROCEEDING NOS. 4221, 4224, 4226 and  
4228

The Honorable Ronald S. Prager  
Coordination Trial Judge

**NATURAL GAS ANTI-TRUST CASES I,  
II, III & IV**

**ORDER GRANTING MOTION FOR  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT AND AWARD OF  
ATTORNEYS' FEES AND  
COSTS**

Date: November 14, 2008  
Time: 8:30 a.m.  
Courtroom: Dept. 71

This Document Relates To:

THE FOLLOWING PRICE INDEXING  
CASES ONLY:

*Team Design, et al. v. Reliant Energy, Inc., et  
al., Los Angeles County Superior Court Case  
No. BC294113*

*Uyeda, et al. v. Centerpoint Energy, Inc., et al.,  
San Diego County Superior Court Case No.  
GIC810580*

*Oberti Wholesale Foods, Inc. v. Encana  
Energy Services, Inc., et al., Alameda County  
Superior Court Case No. RG03098109*

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1 *Shanghai 1930 Restaurant Partners, L.P. v.*  
2 *EnCana Energy Services, Inc., et al., San*  
3 *Francisco County Superior Court Case No.*  
CGC-03-420785

4 *A.L. Gilbert Co. v. Coral Energy Resources,*  
5 *L.P., et al., Alameda County Superior Court*  
Case No. RG03097835

6 *Brown v. Encana Energy Services, Inc., et al.,*  
7 *Alameda County Superior Court Case No.*  
RG03099036

8 *Podesta v. EnCana Energy Services Inc., et al.,*  
9 *San Joaquin County Superior Court Case*  
No. CV021175

10 *Lois the Pie Queen v. EnCana Energy Services*  
11 *Inc., et al., Alameda County Superior Court*  
Case No. RG03104286

12 *Vittice Corp. v. EnCana Corp., et al., Alameda*  
13 *County Superior Court Case No. RG04137797*

14 *Benscheidt, et al. v. AEP Energy Services, Inc.,*  
15 *et al., San Diego County Superior Court Case*  
No. GIC825011

16 *Older v. Sempra Energy, et al., San Diego*  
County Superior Court Case No. GIC835457

17 *Bustamante v. The McGraw-Hill Companies,*  
18 *Inc., et al., Los Angeles Superior Court Case*  
No. BC285598

1 The Court rules on Class Plaintiffs' motion for final approval of class action settlement  
2 and for award of attorneys' fees and costs as follows:

3 Final Approval of Class Action Settlement

4 On July 18, 2008, this Court entered the Order Granting Preliminary Approval of Class  
5 Action Settlement ("Preliminary Approval Order"), preliminarily approving the proposed  
6 settlement, provisionally certifying the settlement class and two subclasses, directing the form  
7 and manner in which notice would be disseminated to class members, and establishing procedures  
8 and deadlines for class members to opt-out of the class or submit objections to the proposed  
9 settlement. The Court set the deadline for publishing and mailing notice to the class for  
10 September 15, 2008. (Preliminary Approval Order, ¶¶12-13.) The Preliminary Approval Order  
11 and notices set October 20, 2008, as the deadline for class members to mail any requests for  
12 exclusion or file and mail any objections to the settlement. (*Id.* at ¶¶18, 23.)

13 When considering a motion for final approval of class action settlement, a court's inquiry  
14 is whether the settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48  
15 Cal.App.4th 1794, 1801 fn. 7 (hereafter "*Dunk*").) A settlement is fair, adequate and reasonable,  
16 and merits approval when "the interests of the class as a whole are better served if the litigation is  
17 resolved by the settlement rather than pursued." (Federal Judicial Center, Manual for Complex  
18 Litigation (4th ed. 2004) §21.61.) "The trial court operates under a presumption of fairness when  
19 the settlement is the result of arm's length negotiations, investigation and discovery that are  
20 sufficient to permit counsel and the court to act intelligently, counsel are experienced in similar  
21 litigation, and the percentage of objectors is small." (*In re Microsoft I-V Cases* (2006) 135  
22 Cal.App.4th 706, 723.) The trial court has broad discretion to determine whether the settlement is  
23 fair. (*Dunk*, *supra*, 48 Cal.App.4th at p. 1801.)

24 The factors considered in deciding whether to grant final approval to a class action  
25 settlement include: (1) the amount offered in settlement; (2) the risks inherent in continued  
26 litigation; (3) the extent of discovery completed and the stage of the proceedings when settlement  
27 was reached; (4) the complexity, expense and likely duration of the litigation absent settlement;  
28 (5) the experience and views of Class counsel; and (6) the reaction of Class members. (*Ibid.*) The

1 Court finds those factors have been satisfied as summarized below.

2 *First Factor-Amount of Settlement.* The amount of the settlement, \$5 million in cash, is  
3 sufficient in light of the circumstances surrounding the action. This settlement in conjunction with  
4 the settlement amounts obtained in the El Paso settlement, the Sempra settlement, and the first  
5 and second rounds of the Price Indexing Cases settlements will result in the receipt of  
6 approximately \$595 million.

7 *Second Factor-Risks Inherent in Continued Litigation.* The risks facing the Class  
8 Plaintiffs included well funded defendants and great uncertainty in the outcome of the litigation at  
9 trial and on appeal.

10 *Third Factor-Discovery and Stage of the Proceeding.* The settlement was reached after  
11 more than three years of extensive investigation, formal and informal discovery, and contentious  
12 litigation.

13 *Fourth Factor-Complexity, Expense and Likely Duration of the Litigation Absent*  
14 *Settlement.* As noted above, the settlement guarantees a substantial recovery for the Class while  
15 obviating the need for lengthy, uncertain, and expensive pretrial practice, trial, and appeals.

16 *Fifth Factor-Experience and Views of Class Counsel.* Co-Lead Class Counsel have been  
17 involved in California energy litigation for six years, have been counsel in each of the other  
18 California natural gas and electricity class action settlements arising from the energy crisis, and  
19 are some of the most experienced class action and antitrust attorneys in California and the United  
20 States.

21 *Sixth Factor-Reaction of Class Members.* In this case, none of the members of the  
22 settlement class has objected to the settlement and only three requests for exclusion have been  
23 received. (Waugh Declaration, ¶5 and Exhibit 2.) When relatively few class members object to or  
24 exclude themselves from a class action settlement, courts interpret that response as evidence that  
25 the settlement warrants final approval. (See e.g., *Stoetznner v. U.S. Steel Corp.* (3rd Cir. 1990) 897  
26 F.2d 115, 118-119 (court found that objections by 29 members out of a settlement class of 281 or  
27 10% “strongly favors settlement”).

28 Based on the factors detailed above, the Court grants the request for final approval of the

1 class action settlement.

2 Application for Attorneys' Fees and Costs

3 The "experienced trial judge is the best judge of the value of professional services  
4 rendered in his court, and while his judgment is of course subject to review, it will not be  
5 disturbed unless the appellate court is convinced that it is clearly wrong." (*Serrano v. Priest*  
6 (1977) 20 Cal.3d 25, 49 (hereafter "*Serrano*").)

7 Both California state and federal courts recognize two methods for evaluating the fairness  
8 and reasonableness of attorneys' fees in class action settlements resulting in the creation of a  
9 common fund for the distribution to class members: (1) the percentage-of-the-benefit method; or  
10 (2) the lodestar method plus multiplier method. (*Wershba v. Apple Computer, Inc.* (2001) 91  
11 Cal.App.4th 224, 254.)

12 *Percentage-of-the-Benefit Method.* It is customary in percentage-of-the-benefit cases that  
13 attorneys fees are awarded based on 25 percent to 30 percent of the benefit received by the class.  
14 (*In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F.Supp. 1373, 1378-1379 and *Staton v. Boeing*  
15 *Co.* (9th Cir. 2003) 327 F.3d 938, 968.) Here, Class Plaintiffs' counsel seeks \$1,382,163.00 or  
16 27.6% of the \$5 million settlement consideration. This falls within the percentages awarded in  
17 other class action litigation in California and in other jurisdictions.

18 *Lodestar/Multiplier Method.* The factors considered are: (1) the continuing obligation of  
19 plaintiffs' counsel to devote time and effort to the litigation; (2) the extent to which the litigation  
20 precluded other employment by the attorneys; (3) the contingent nature of the fee agreement, both  
21 from the point of view of eventual success on the merits and securing a fee award; (4) the  
22 experience, reputation, and ability of the attorneys who performed the services, and the skill they  
23 displayed in litigation, and (5) the amount involved and the results obtained on behalf of the class  
24 by plaintiffs' counsel. (*Serrano, supra*, 20 Cal.3d at p. 49.) However, no rigid formula applies and  
25 each factor should be considered only "where appropriate." (*Dept. of Transp. V. Yuki* (1995) 31  
26 Cal.App.4th 1754, 1771; *See also Serrano, supra*, 20 Cal.3d at p. 49.)

27 The Court finds the requested fees are reasonable and appropriate for the reasons stated  
28 below.

1        *First Factor-Time and Effort Litigating Case.* Class Plaintiffs' counsel report a lodestar  
2        benefiting the class of \$508,374.00 and a cumulative lodestar of \$13,590,781.00. (Himmelstein  
3        Fee Declaration, Exhibits A-C). Discovery and briefing were coordinated as effectively as  
4        possible. While some duplication of effort was inevitable, counsel divided responsibilities for  
5        pursuing discovery, responding to discovery requests, drafting motions, working with experts,  
6        communicating with Defendants, and drafting settlement documents.

7        *Second Factor-Preclusion of Other Employment.* Class Plaintiffs' counsel was precluded  
8        from accepting other work as a result of their performance of 35,000 hours of service.

9        *Third Factor-Contingent Nature of the Fee Agreement.* Class Plaintiffs' counsel agreed to  
10       represent their clients on a contingent basis.

11       *Fourth Factor-Experience, Reputation, and Ability of Counsel.* Class Plaintiffs' counsel's  
12       skills in developing evidence, obtaining remand from federal court, defeating demurrers involving  
13       novel preemption, filed-rate doctrine and UCL arguments, briefing class certification, working  
14       with experts, and successfully navigating the complex federal and state judicial and regulatory  
15       framework traversed by this case were essential to achieving these settlements.

16       *Fifth Factor-Amount Involved and Results Achieved.* As noted above, AEP agreed to pay  
17       \$5 million for the benefit of the Class.

18       Therefore, the Court grants the motion for attorneys' fees as requested.

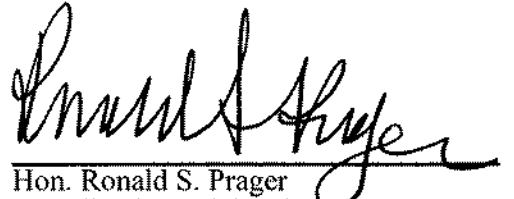
19       *Multiplier.* In addition, California courts have been expressly authorized to adjust the  
20       multiplier upward to approximate a "percentage fee[] freely negotiated in comparable litigation."  
21       (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 49-50.) This Court and numerous cases  
22       have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees. (*Natural Gas*  
23       *Antitrust Cases, I-IV* (December 10, 2003) and *Natural Gas Antitrust Cases, I-IV* (June 27, 2006)  
24       (Prager, J.)) Based on the foregoing, the Court finds that a multiplier of 2.72 is warranted in this  
25       case.

26       *Reimbursement of Costs.* "[T]he prevailing view is that expenses are awarded in addition  
27       to the fee percentage" (Conte, *Attorney Fee Awards* (2d ed. 1977) §2.08, pp. 50-51) and are  
28       routinely reimbursed in contingency cases (*In re Businessland Sec. Litig.*, Case No. 90-20476

1 RFP, slip. Op. at 4 (N.D. Cal. 1991).) The Court grants the request for reimbursement of expenses  
2 totaling \$117,837.00 incurred in this case. (Himmelstein Fee Declaration, Exhibits C, D.)

3 IT IS SO ORDERED.

4  
5 November 25, 2008

  
6 Hon. Ronald S. Prager  
7 Coordination Trial Judge  
8 Superior Court of the State of California  
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